



# KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No.70/2022

Dated 18<sup>th</sup> October, 2022

Present: Sri. P H Kurian, Chairman  
Smt. Preetha P Menon, Member  
Sri.M.P.Mathews, Member

## Complainant

IHDC HASHIS TECHNOVALLEY  
TOWERS Owners Association,  
Karyavattom, Trivandrum.  
Represented by its Secretary Ajin Thomas.

(By. Adv. Praveen Vyasam)

## Respondents

1. IHDC LLP,  
House No.39/3450,  
Ground Floor, Kizhakkemadam,  
Manikkath Cross Road, M.G.Road P.O,  
Cochin-682016.  
Represented by its Managing Partner, Letha R Nair.
2. Latha R Nair,  
Managing Partner,  
IHDC LLP, T.R Residency,  
Nettippadam Road,  
Ernakulam -6822016.

(By Adv. Riji Rajendran)



3. Abdul Hashim,  
Hashirah Manzil,  
Mohanapuram, Koithoorkonam P.O,  
Andoorkonam village, Trivandrum-695584.

4. Razanath Abdul Hashim  
Hashirah Manzil,  
Mohanapuram, Koithoorkonam P.O,  
Andoorkonam village, Trivandrum-695584.

The above Complaint came up for virtual hearing today. Counsel for the Complainant and counsel for the Respondents No. 1&2 attended the hearing. But the Respondents No. 3 & 4 did not attend the hearing.

### **ORDER**

1. The Complainant is an association of Allottees of project named 'IHDC Hashys' developed by the Respondents located at Thiruvananthapuram district. The said project is registered with the Authority under section 3 of the Act, 2016. (Registration No. K-RERA/PRJ/TVM/018/2022).

2. The case of the Complainant is as follows: -  
The Complainant represents the allottees of the project devised by the Respondents. Allured by the advertisement which offered children play area, mini party hall, unisex gymnasium etc., the members of the complainant association had booked apartment units for which the

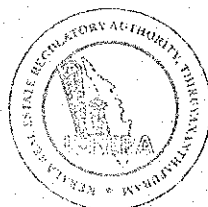


Respondents executed documents in the nature of individual agreements for sale of undivided share in the land and agreements for construction in favour of the allottees. Sale deed was also executed to indicate that they have fulfilled their promises but they failed to complete the basic amenities like water connection, play area, floor tiles, roofing work, etc. True copy of list of allottees of the project is produced. Copies of agreement for construction, agreement for undivided share and sale deed in favour of one of the allottees is also produced to substantiate that the Respondents have committed serious violations and contravention with regard to Kerala Real Estate (Regulation & Development) Act, 2016. Even after sale deed was executed none of the amenities were in place but the brochure put out by the Respondents shows that the apartments would be ready to occupy at the time of purchase but the substantial works were pending. The basic amenities were not provided as per the specifications mentioned in the brochure which is clear from the letter dated 13/03/2020 issued by the promoters addressed to the flat owners. The Respondents miserably failed to form association of allottees which is the duty of the promoter as per the Act. Hence the allottees are forced to form association themselves and obtained certificate of registration. The Respondents issued a mail dated 02/02/2020 demanding the allottees to lay pipes for water connection at their own expense after obtaining due permission from the authorities at an extra cost of Rs.25 Lakhs which reflects the promoters' intention to defraud the allottees and run away from their responsibilities. Hence this



Complaint. The reliefs sought by the Complainant are (1) to direct the Respondents to complete the work as per the specifications mentioned in the agreement for construction in accordance with governing rules (2) to provide basic amenities as promised in accordance with the Kerala Municipality Building Rules (3) to permit the Complainant association to approach the adjudicating Authority for compensation under the Act. Copies of list of allottees, agreement for construction, agreement for sale, sale deed, prospectus issued by the Respondents, letter dated 13/03/2020 issued by the promoters, letter dated 20/01/2020 and photographs, email communications, certificate of registration of allottees, occupancy certificate have been produced from the part of the Complainants.

3. The Respondents 1 & 2 have filed counter Affidavit denying the allegations and contentions in the Complaint and stating that the Complainant is not entitled to get any reliefs. It is stated in the said affidavit sworn by the 2<sup>nd</sup> Respondent, the Managing Partner of the 1<sup>st</sup> Respondent that the 1<sup>st</sup> Respondent has been a well-known brand in the construction industry for the last 3 decades and is a pioneer. It states that they obtained building permit for the project in question here in the year 2015. The Project consists of 3 towers with 30 units, out of which one unit has been left out for lobby and common facilities though the same is not part of any agreement. 20 units including that of the Respondents 3 & 4 had already been handed over in 2019 and for the project, they provided a borewell and one deep



open well for the use of the owners and a large sump for collecting water with storage capacity of 25,000 litres, motor connection to overhead tank above 2 towers, pipeline for water connection from the Kerala Water Authority. The delay in obtaining connection from the Kerala Water Authority is not attributed to the 1<sup>st</sup> Respondent and the promoter cannot be held liable for any delay on part of these statutory authorities, as per the agreements. The Respondents further submitted that the prospectus produced by the Complainant depicts that the 3 bed room apartments are ready to occupy at 49 Lakhs. The sale deed produced by the Complainant clarifies that the secretary of the association had purchased the flat including the car parking for Rs.27,26,000/- The brochure which has been circulated by the 1<sup>st</sup> Respondent has already been uploaded in the website of the Authority which would clarify the issue raised by the Complainant.

4. The Respondents further stated that it is to point out from the email dated March 2021 produced by the Complainant that Flat No.1B has been rented out by the owner of the Flat. It is unbelievable that anyone would take a flat for rent without the supply of water or electricity. Thus, it is evident that the Complainant is making false allegation against the Respondents to make unlawful gains. Further an email was issued to the 1<sup>st</sup> Respondent to disconnect the supply of water and electricity connection of Flat No.1B in the month of January 2021. Further as regarding electricity connection, the 1<sup>st</sup> Respondent had obtained



electricity supply from KSEB to all the apartments and the common area. The photographs denoting the installation of energy meter is produced. The allegation made against the promoter regarding the registration of the project is false as the 1<sup>st</sup> Respondent had already registered the project with the Authority under the Act. The list of allottees produced by the Complainant does not include the 6 flats allotted to the 3<sup>rd</sup> & 4<sup>th</sup> Respondents. By making the payment of Rs.27,26,000/- and purchasing a flat, the Complainant expects to have amenities which are not included in the agreement upon his whims and fancies. The Complainant is now pointing out the email communications of subsequent dates to the sale deed to establish that the promoter had assured amenities which has not been included in the agreement or the sale deed. The RERA Rules came into force on June 14,2018 whereas the agreement was executed on a prior date i.e., May 05, 2018. Hence the Respondents have not violated any RERA Rules. As regarding the amenities to be provided as per sale deed, the 1<sup>st</sup> Respondent had provided all the basic amenities as assured in the sale deed. The photographs denoting the completion of work is also produced. With regard to the formation of association the Respondent had several meetings with the allottees to initiate the process of formation of the association and Draft bye laws were also shared and discussed from the side of the 1<sup>st</sup> Respondent, so as to register the association which is evident from the email dated 31/01/2020. Copies of photographs depicting the handing over ceremony, e mail dated 30/01/2021, photographs denoting installation of energy meter &



completion of work and e mail dated 31/01/2020 have been produced from the part of the Respondents. The Respondents 3 & 4 neither attended the hearing nor filed any counter statement and documents.

5. Heard both parties in detail and perused the documents produced by each of them. The Authority vide interim order dated 11/05/2022 directed the Respondents (1) to convene a meeting with the Association of Allottees of the project named "IHDC Hashys" and discuss in detail regarding the issues and arrive at a settlement before the next posting date. The Respondents shall file an affidavit regarding the result of the meeting. (2) To provide drinking water facility to the Allottees uninterruptedly as promised by them during the hearing. In compliance of the above order the Respondents have the filed an affidavit dated 4/07/2022 along with minutes of the meeting and report, stating they have convened a meeting with allottees, association and land owners on 11/06/2022 at 10.15 AM and discussed in detail the matter in issue. The Complainant has not filed any objection to the affidavit filed by the Respondent. During the hearing on 24/09/2022, the Counsel for the Respondent reported that they have completed all the Works as promised as per the agreement. But the representative of Complainant Association as well as their counsel strongly objected and submitted that none of the pending works has been completed by the Respondent/Promoter, though they had agreed in the meeting convened on 11/06/2022 as per the direction of the Authority. The complainants alleged that even



basic amenities were not provided in the project. The project is a registered project under section 3 of the Act, 2016 and the Authority has noticed that the Respondent/ Promoter had already uploaded Form 6 in the web- portal of the Authority stating that the project has been completed in all respects as promised to the allottees as per the terms of the agreements. Hence the Authority found it necessary to get the project site inspected and obtain a detailed report with respect to status of works and deputed Two officers of the Authority to inspect the project and submit detailed report within one week. Thereafter two officers of the Authority visited the project site on 07/10/2022 and submitted a report along with photographs showing the present condition of the project. It has been stated in the report that the apartment block consists of 2 BF + GF + 4 floors. 6 units in each floor, total 29 units, in which 9 units owned by the land owner. Presently 17 units are occupied. During the site inspection it was pointed out by the representatives of the Association of allottees that there are no water connections in the flats, play area and parking area are not completed, electric connection for common area is not provided, STP is not functioning properly, Roof top finishing and water proof works are not completed, leakage in the water tank etc. The findings of the officers as per the report are (1) the roof top is not finished, which causes leakage and dampness in the units in the 4<sup>th</sup> floor, (2) certain areas of the car parking in the basement floor are not properly finished (3) the debris are stacked in the rear side of the building (4) construction works of security cabin, association room and





gymnasium are going on. During the inspection, the association members informed that these works are being undertaken by the owner's association and the representative of the land owner informed that their flats are not yet completed. The representative of the Respondent/Promoter informed the officers that the fixtures are arrived and the works are in progress.

6. The documents produced by the Complainants are marked as Exbts.A1 to A10 and the documents produced by the Respondents are marked as Exbts.B1 to B4. The report of inspection submitted by the officers of the Authority is marked as Exbt.X1. Exbt.X1 reveals that some of the works such as roof top, certain areas of the car parking in the basement floor, construction works of security cabin, association room, gymnasium etc. are not completed. Exbt. A2 is the copy of an agreement for construction dated 05.05.2018 executed between the 1<sup>st</sup> Respondent/Promoter represented by the 2<sup>nd</sup> Respondent and one of the allottees named Mr. Ajin Thomas in which the Respondents/Promoters promise to hand over the property described in Schedule B of the agreement and a covered car park No. 20 of Basement-I. Schedule C of the said agreement consists of a detailed list of specifications of the construction to be done in the project. Exbt. A3 is the copy of an agreement for sale of undivided share of land dated 05.05.2018 which is executed by the 3<sup>rd</sup> Respondent through his power of Attorney holder, 1<sup>st</sup> Respondent represented by the 2<sup>nd</sup>



Respondent Managing partner and the allottee Mr. Ajin Thomas and the Schedule of the said agreement describes the property consists of undivided share of land "with unfinished building and all the appurtenant thereto". Similarly, the C Schedule attached to Exbt. A4 Sale deed also gives description as "the incomplete apartment and car parking". Hence it can be found that at the time of execution of sale deed the works were not completed as promised to the allottees. The Exbt. X1 inspection report submitted by the officers of the Authority before us also reveals that certain works in the project is not yet completed as promised to the allottees and the Respondents also failed to handover possession of common area and the documents pertaining to the project to the Association. During the hearing the learned Counsel appeared for the Complainant alleged that even the execution of sale deeds in favour of the allottees is not yet completed by the Respondent/Promoter. Section 17(1) of the Act, 2016 stipulates that *"The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws". Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of*



*issue of occupancy certificate” Moreover Section 17(2) provides that “After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws”. Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.*

7. After hearing both parties and perusing the documents placed on record including Exbt. X1 report, we found that the contentions raised by the Complainants against the Respondent/Promoter with respect to the non-completion of the project are truthful. It is also noted seriously that even though the project has not been completed by the Respondent/Promoter as promised to the allottees as per the terms of the agreement and the common areas and documents have not been handed over to the Association, the Promoter has uploaded Form-6 dated 17.02.2022 in the registration web portal which is signed by one Architect L. Gopakumar, declaring that *“Based on the completion Certificate from Structural Engineer and Site supervisor, details furnished by the Promoter as to the promises made to the allottees and to the best of his knowledge, the project has been completed in all aspects as promised to the allottees of the project.”* The Registration given to the project in question was expired on 15.05.2021. But the Occupancy Certificate is seen obtained only on



16.09.2021. Thereafter, Form -6 has been uploaded on 18.02.2022. As per the provisions laid down under Section 6 of the Act 2016 read with Rule 8 of the Rules 2018, if the Respondent/Promoters was not able to complete and hand over the project in all respects before the date of expiry of registration, they ought to have filed application for extension of registration, 3 months prior to such date of expiry of registration. Here in this case, it is perceived that the Respondent/Promoter have not taken any action this regard. Even though the learned counsel for the Respondent/Promoter repeatedly submitted that the works have been completed, it cannot be acceptable as he could not produce any evidence to corroborate his contentions. As we expressed many times through orders earlier, the completion of a project as promised to the allottees cannot be substantiated by the Occupancy Certificate issued by the local authority which only states that "the work executed is in accordance with the permit and the building is now fit for occupation/use." Nevertheless, the Respondents No. 1&2 being the Promoters of the project which comes under the purview of the Act 2016 shall be duty bound to adhere to the provisions under Section 11(4) of the Act 2016 with respect to his obligations towards the allottees. According to Section 14(3) of the Act 2016 *"In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the*



*aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act*". So, as far as the complaints of the Complainants with regard to some defects in workmanship, quality or provision of services, etc. they can seek compensation as provided under the provision aforementioned.

8. As it is found that the Respondents/Promoters have failed to complete the project in all respects as promised to the allottees and to handover the common area and documents related to the whole project to the Complainant association, we decided to grant 2 months' time to complete all these works. In view of the above facts and findings and with the consent of both the parties and, invoking Section 34(f) & 37 of the Act, this Authority hereby issues directions as follows: -

1. The Respondents No. 1 & 2 shall complete the entire works of the project 'IHDC Hashys' with all the mandatory sanctions/approvals and common amenities/ facilities in accordance with the terms of the agreements executed with the allottees and shall handover formally, the common areas and all the documents pertaining to the project including drawings, title deeds, sanctions and approvals, etc. obtained for the project to the Complainant association on or before **14/01/2023**, failing which the Respondents No. 1&2 shall be liable to pay penalty as provided under Section 63 of the Real Estate (Regulation & Development) Act, 2016.



2. The Complainant may approach the Adjudicating officer of the Authority for eligible compensation as per law.

Sd/-  
Smt.Preetha P Menon  
Member

Sd/-  
Sri.M.P. Mathews  
Member

Sd/  
Sri. P H Kurian  
Chairman

/True Copy/Forwarded By/Order



Secretary (legal)



## Exhibits

### Exhibits marked from the Side of Complainants

- Ext.A1- Copy of list of allottees.
- Ext.A2- Copy of Agreement for Construction.
- Ext.A3- Copy of agreement for sale.
- Ext.A4- Copy of sale deed
- Ext.A5- Copy of Prospectus issued by the Respondents.
- Ext.A6- Copy of letter dated 13/03/2020 issued by the promoters.
- Ext.A7 series- Copy of letter dated 20/01/2021 and photographs.
- Exbt.A8 Series- Copy of E-mail communications.
- Exbt.A9- Copy of certificate of registration of allottees.
- Exbt.A10- Copy of Occupancy certificate.

### Exhibits marked from the Side of Respondents

- Ext.B1- Copy of photographs depicting the handing over ceremony.
- Ext.B2- Copy of e mail dated 30/01/2021.
- Ext.B3- Photographs denoting installation of energy meter & completion of work.
- Ext.B4- Copy of e mail dated 31/01/2020.



